

April 15, 2008

Via Overnight Mail

Pamela Creedon, Executive Director
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

**Re: Correction to March 13, 2008 Letter Regarding Comments on Tentative Cease and Desist
Order Issued to City of Dixon**

Dear Ms. Creedon:

This letter is to correct the following inadvertent errors in our March 13, 2008 letter setting forth the City of Dixon's comments and recommendations on the February 11, 2008 Tentative Cease and Desist Order and Draft Revised Monitoring and Reporting Program for the City of Dixon Wastewater Treatment Facility:

1. On Page 2 of the letter, the City included a table summarizing the current performance of the City's wastewater treatment facility in comparison to the proposed effluent limitations. The Treated Wastewater values in the table were based on a two-year average. These values do not accurately reflect the seasonal changes in the wastewater treatment facility's performance. Therefore, the City has provided two new sets of Treated Wastewater values, one based on a 3-month winter average for 2007 and one based on a 3-month summer average for 2007.

2. On Page 7 of the letter, the City proposed a revised compliance schedule. Item 7 of the proposed schedule reads as follows:

7. By **August 31, 2009**, the Discharger shall submit a *Report of Waste Discharge (RWD)* to apply for revised Waste Discharge Requirements for the WWTF. If the Discharger wishes the Regional Board to use higher water quality limitations than those listed in Finding No. 23, the RWD shall include a *Revised Background Groundwater Quality Report* with site-specific analysis justifying appropriate water quality limitations. The RWD may also include a beneficial use, reuse and/or degradation assessment. [NOTE: the RWD *will not* include a *90% Design Report* because of the aggressive time frame and because the WWTF improvement project will be undergoing environmental review pursuant to the California Environmental Quality Act.]

The compliance date for this item was inadvertently stated to be August 31, 2009. The correct compliance date is August 31, 2010. The August 31, 2010 date is in the City's critical path method schedule and is the date we discussed with you and your staff at our March 10, 2008 meeting.

3. In the last paragraph on Page 10, the City discussed dilution of effluent with storm water and surface water as a possible compliance measure. The last sentence of the paragraph states, "However, to date, Regional Board staff has stated that dilution of effluent with surface water is not the highest and best use of surface water supplies, is contrary to State water conservation goals, and is generally not an unacceptable compliance method." The word "unacceptable" was inadvertently used instead of "acceptable."

4. On page 20, Item 16, the City intended to clarify that the only reason it was required to submit a revised Financing Plan was because such plan was repealed by the voters. The current language in the letter is unclear and does not reflect this intent. Accordingly, Item 16 should instead read "The City was only required to submit a revision or addendum to the Financing Plan because the plan was repealed by the electorate, not because the plan was inadequate when originally submitted to the Regional Board."

Enclosed herewith is a revised copy of our March 13, 2008 letter, excluding the attachments. In addition, we have enclosed a Gant chart illustrating the schedule milestones in the City's proposal. We believe this chart will be useful to Regional Board staff in reviewing Dixon's proposal. We would appreciate it if you would include the corrected documents and the Gant chart in the record for the hearing on the Tentative Cease and Desist Order.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Newmark", with a stylized, flowing script.

Gregory J. Newmark

cc: Patrick Pulupa, Esq.
Royce Cunningham

Enclosures

GJN:SW
1079412.2

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Re: City of Dixon's [CORRECTED] Comments on Tentative Cease and Desist Order and Draft Revised Monitoring and Reporting Program for the City of Dixon Wastewater Treatment Facility

Dear Ms. Creedon,

I. Introduction

I am pleased to submit the City of Dixon's comments and recommendations regarding the Tentative Cease and Desist Order and Draft Revised Monitoring and Reporting Program for the City of Dixon Wastewater Treatment Facility ("Tentative Cease and Desist Order" or "Tentative Order") you issued on February 11, 2008. The City's comments and recommendations are set forth in this letter and in the enclosed documents.

City representatives have met with Regional Board staff on numerous occasions to discuss issues regarding Dixon's wastewater treatment facility. We appreciate the time staff has devoted to this issue, and we thank the staff members for their courtesy.

Nevertheless, the City respectfully asserts that the Tentative Cease and Desist Order cannot be adopted without significant modifications. It is impossible to comply with and would set a course for failure. There is no way the City can achieve compliance with the interim effluent limitations in two years or the second-tier effluent limitations in four years. Improvements to the wastewater treatment plant cannot be planned and constructed that quickly, and source control programs will not be effective enough or fast enough.

To avoid an order that is impossible to comply with, Dixon has proposed modifications to the interim compliance requirements and deadlines. This proposal is aggressive and provides the Regional Board with assurances of progress while giving the City at least the possibility of completing the required actions on time. City staff and Regional Board staff had discussed this proposal in a meeting, and all parties agreed it

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is reasonable. Dixon therefore asks that the Tentative Cease and Desist Order be modified in accordance with the proposal.

The Tentative Cease and Desist Order also cannot be adopted without significant modifications because it is technically and legally flawed. The Regional Board's adoption of the Cease and Desist Order is not categorically exempt from the California Environmental Quality Act because the cumulative impact of similar projects is significant and because this project may itself cause significant adverse environmental impacts greater than the alleged threat to water quality which the Regional Board seeks to cure. Similarly, the Regional Board has not complied with the Water Code in adopting the effluent limitations in the Tentative Order. The Regional Board's technical basis for deriving these effluent limitations is also inappropriate and unsupported.

In addition to these major issues, the Tentative Cease and Desist Order also contains numerous inaccuracies. Dixon has identified these inaccuracies in the final section of this letter, and offered corrections.

Dixon is committed to protection of water quality. It looks forward to working cooperatively with the Regional Board to achieve that goal by adopting an aggressive, but feasible, approach. The Tentative Cease and Desist Order must be modified to achieve this end.

Due to the extremely limited amount of time given to respond to these comments, Dixon reserves the right to submit additional comments and evidence.

II. Current Plant Operations

A. Current Plant Performance

The following table summarizes the performance of the City's wastewater treatment facility in comparison to the proposed effluent limitations and drinking water standards.

Constituent of Concern	Raw Wastewater (1)	Treated Wastewater		Proposed Limitations	SMCL
		Winter (2)	Summer (3)		
TDS (mg/L)	650	700	880	810	500 - 1,000
EC (umhos/cm)	1,275	1,070	1,386	1,310	900 - 1,600
Boron (mg/L)	0.7	0.77	0.98	0.7	---
Sodium (mg/L)	150	167	223	145	---
Chloride (mg/L)	130	125	217	106	250 - 500
Hardness (as CaCO ₃)	190	---	---	---	---

1 Composite samples in October 2007

2 2007 3-month winter average

3 2007 3-month summer average

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B. Current Source Control Measures

1. Industrial Source Control

As a component of the salinity source study, City staff has instituted spot checks on commercial and industrial facilities for water softeners and has gathered water use data for each business so that salt from these sources can be estimated. When new numeric effluent limitations are imposed, the City intends to adjust its local limits ordinance accordingly with time allowances for public comment. Under the new local limits, it is unlikely that significant use of any sodium regenerated ion-exchange softeners would be allowable if the regeneration brine, or even conditioned water, is directed to the waste stream. The City intends to advise businesses of the changes to discharge limits and then follow up with enforcement inspections over the two year period following adoption of the ordinance.

2. Residential Source Control

The City is completing the salinity source study and expects to release it for public comment before enacting water softener control ordinances. City staff has determined that almost 500,000 pounds of salt is sold annually in Dixon. A majority of this salt is probably used for residential self-regenerating water softeners.

The City's consultant has modeled the expected effluent quality of a typical Dixon household's component of WWTF effluent. The expected effluent quality for a typical household using self-regenerating ("SRWS") type and canister exchange ("CEX") type water softeners are presented in the table below. The model predicts that any ion-exchange softener that uses sodium recharge, including canister exchange type units, will undermine the City's ability to comply with salinity effluent limitations at the WWTF.

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Summary Household Effluent Quality Contributions by Conditioning Choice

SRWS – All Water	1,510	400	730
SRWS – Indoor Water	1,125	325	415
SRWS – Hot Water	810	200	220
CEX – All Water	620	265	95
CEX – Indoor Water	620	265	95
CEX – Hot Water	620	180	95
Non-Salt Conditioning	600	120	95
Effluent Limits	810	145	106

YELLOW SHADING INDICATES CONDITIONING CHOICE MAY UNDERMINE PERMIT COMPLIANCE

In response to new effluent limitations, the City intends to adopt water softener control measures to the limited extent allowed by State law and as soon as practicable, along with an educational program already under way, with the goal of producing measurable reductions in wastewater salinity within approximately two years.

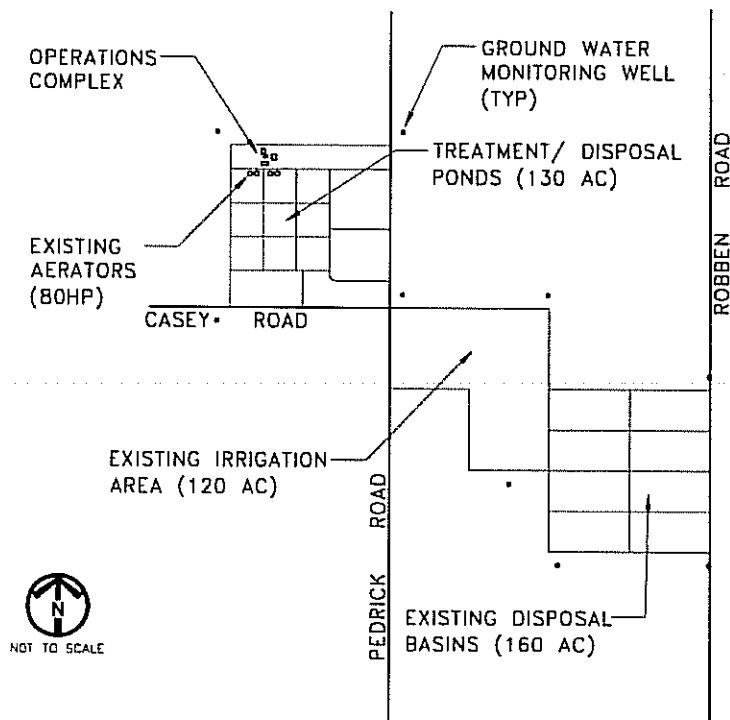
C. Groundwater Monitoring Data

1. Description of Monitoring Network

The City has installed a network of groundwater monitoring wells. These wells are relatively shallow [approximately 35 feet deep], with nine surrounding the WWTF (five of which were installed in approximately 2004), three additional up-gradient wells, one well about ½ mile north west, and two other wells in the developed portion of Dixon approximately 4-5 miles north of the WWTF. The monitoring network is depicted

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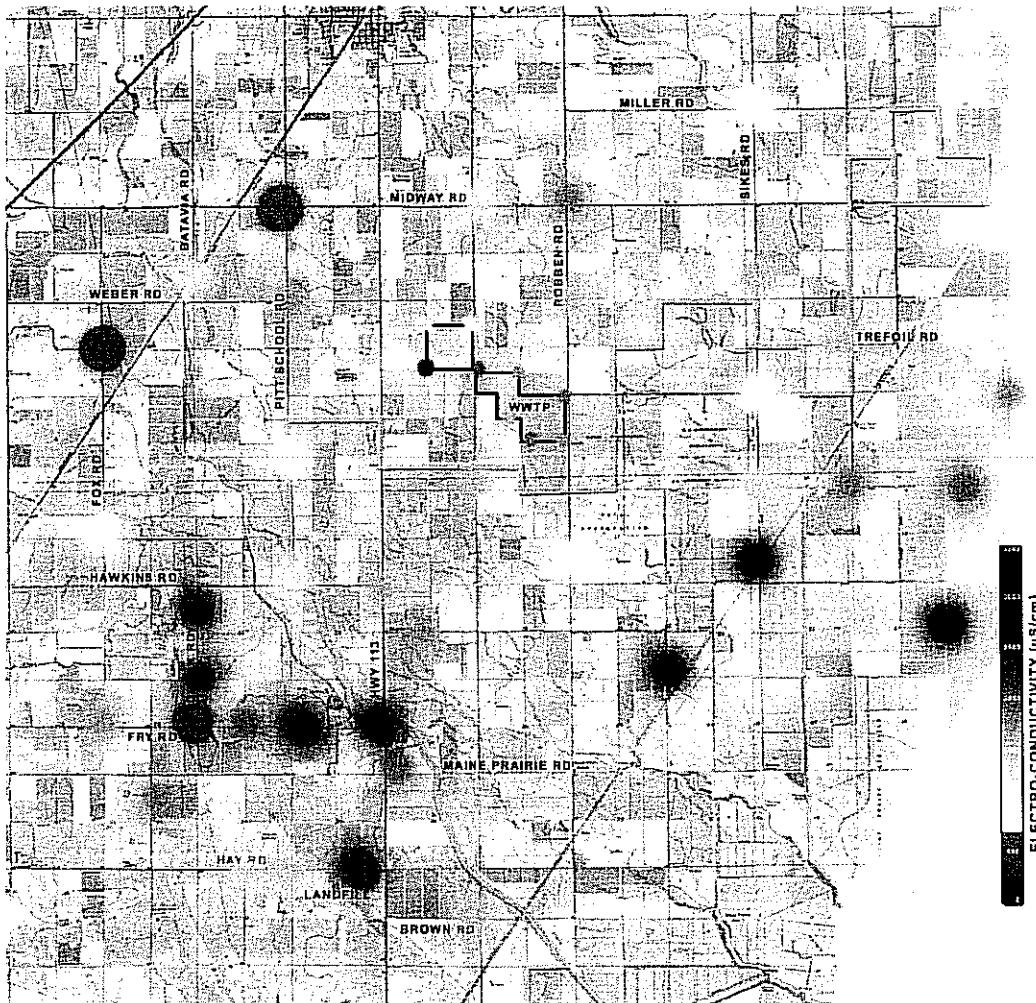
in the following figure.



2. Regional Aquifer Variability

During prior investigations, the City gathered approximately 50 "grab" samples of shallow groundwater throughout the region using Cone Penetrometer Testing ("CPT") methods. Data was found to be highly variable with significantly different results generated between sample locations separated by only a very short distance. The variability is best illustrated by the following figure displaying Electric Conductivity ("EC") for the CPT samples, as well as at the City's permanent monitoring well locations. Average effluent EC is also represented in the WWTP outline.

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An additional key point to note is that the City has never found an agricultural well or domestic supply well that was affected by discharges from the WWTF.

III. City's Proposed Changes to Interim Measures and Final Compliance Date

Although Dixon believes the data will ultimately show that no enforcement orders compelling treatment improvements are necessary, the City recognizes that the Regional Board seems committed to issue another cease and desist order at this time. Dixon therefore proposes the following modifications to the actions ordered by the Tentative Cease and Desist Order.

These proposed modifications provide the Regional Board with enforceable milestones to insure the City is progressing as rapidly as possible toward compliance. The proposed modifications provide for the planning, environmental review, design, and construction of treatment plant improvements to address salinity. However, the proposal also includes an "off ramp" midway through the process where the improvement

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project can be scaled down or eliminated if the Regional Board and the City agree that data supports such a conclusion. The City has recently discussed this proposal with Regional Board staff, and staff noted that this approach seems reasonable.

The modifications also provide the City with interim and final compliance points that are within the realm of possibility, albeit at a tremendous expense. The proposed schedule is very aggressive and tries to account for all known and reasonably foreseeable tasks and activities. However, the schedule does not account for several potential events that would cause delays. For example, the proposed schedule does not allow time to account for litigation from third parties or unexpected complications with technical or environmental review. The proposed schedule also assumes that the Regional Board will review the City's submissions within 60 days. If the Regional Board's review takes longer than 60 days, it may be difficult or impossible to adhere to the proposed schedule.

Paragraphs 2 through 6 of the Order portion of the Tentative Cease and Desist Order, on pages 11 and 12, should be replaced by new provisions reflecting the proposal outlined below. The dates in Dixon's proposal assume that the Regional Board will hold a hearing on the Cease and Desist Order no later than April 30, 2008, and that the order will be finalized and issued no later than June 30, 2008.

2. By **August 29, 2008**, the Discharger shall submit a *Workplan for Monitoring Well Network Modifications*.
3. By **September 30, 2008**, the Discharger shall complete and submit a Salinity Source Study prepared in compliance with Health and Safety Code section 116786.
4. By **November 28, 2008**, the Discharger shall adopt and submit an Ordinance prohibiting the installation of residential water softening or conditioning appliances that discharge salinity to the community sewer system.
5. By **March 31, 2009**, the Discharger shall submit a facilities and financing plan for improvements to the WWTF designed to achieve compliance with the second-tier effluent limitations in this Order. The facilities and financing plan will not include advanced design plans and specifications, but will include sufficient preliminary design information to prepare a reasonable engineer's estimate of cost and begin environmental review under the California Environmental Quality Act.
6. By **April 30, 2009**, the Discharger will submit a Residential Salinity Source Control Plan that will describe measures the City will undertake to address salinity discharged into the community sewer system from existing residential water softening or conditioning appliances.
7. By **August 31, 2010**, the Discharger shall submit a *Report of Waste Discharge (RWD)* to apply for revised Waste Discharge Requirements for the WWTF. If the Discharger wishes

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the Regional Board to use higher water quality limitations than those listed in Finding No. 23, the RWD shall include a *Revised Background Groundwater Quality Report* with site-specific analysis justifying appropriate water quality limitations. The RWD may also include a beneficial use, reuse and/or degradation assessment. [NOTE: the RWD *will not* include a *90% Design Report* because of the aggressive time frame and because the WWTF improvement project will be undergoing environmental review pursuant to the California Environmental Quality Act.]

8. By **September 30, 2010**, the Regional Water Board will hold, and the Discharger shall participate in, a hearing on the RWD and the adoption of revised Waste Discharge Requirements for the WWTF.
9. By **December 31, 2010**, the Discharger shall submit a *Salinity Source Control Effectiveness Report* describing the results of the City's source control program and setting forth conclusions about whether improvements to the WWTF are necessary.
10. By **April 29, 2011**, the Discharger shall certify an Environmental Impact Report (or other environmental document) for any necessary improvements to the WWTF, and shall submit a copy of that certification or document.
11. By **April 28, 2012**, the Discharger shall award a contract for construction of improvements to the WWTF, and shall submit a copy of the award.
12. By **April 30, 2014**, the Discharger shall submit a copy of the City Council's acceptance of completion of the WWTF improvements construction contract.

Dixon believes this proposal should be acceptable to the Regional Board, and the City looks forward to working cooperatively with Regional Board staff to address additional details regarding the proposal.

IV. Dixon Cannot Comply With the Tentative Cease and Desist Order

A. Both the Interim and Second-Tier Effluent Limitations Would Require Dramatic Treatment Process Changes

Both the interim and second-tier effluent limitations impose drastic reductions in effluent salinity levels. Under the Tentative Order, these levels must be achieved in just two years for the interim limitations and four years for the second-tier limitations. The only way to achieve these drastic salinity reductions will almost certainly be to construct improvements to the wastewater treatment facility.

B. The Time Frame To Achieve the Interim Limits is Impossible

The City and its consultants have evaluated the planning, environmental review and construction activities

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that would be required to bring an upgraded treatment facility online. There is no way the City could possibly have such a facility planned, constructed and operating in two years or four years. Even if no unexpected delays occur, improvements to the wastewater treatment or disposal facilities could not be completed in less than six years.

It is therefore impossible for the City to comply with either the interim or second-tier effluent limitations by the deadlines in the Tentative Cease and Desist Order. It is obvious that even if construction began immediately, partially completed improvements will not provide a partial improvement in effluent quality needed to meet the interim limitations.

Implementation of source control efforts similarly cannot provide compliance. Even if these programs prove to be much more effective than expected, they too take time to have an effect on wastewater salinity levels. Two years for the interim limitations, and four years for the second-tier limitations, is not enough time.

The Tentative Order does not include any findings that justify the two and four year deadlines. Since there are no findings, they obviously do not bridge the analytical gap between the effluent limitations, the deadlines, and any evidence that would indicate the City could comply with any of these requirements. Absent such findings, analysis, and evidence the Tentative Order is legally invalid.

V. All Possible Compliance Measures Are Either Unacceptable to the Regional Board or Will Take Longer Than Allowed by the Tentative Cease and Desist Order And Will Have Significant Economic and Environmental Impacts

A. Change the Method of Disposal

1. Reclamation

One of the alternate disposal methods the City considered was reclamation. While reclamation is the preferred disposal option under the Basin Plan, followed by land disposal, seasonal surface water discharge, and year-round surface water discharge, reclamation would concentrate salts to an even greater degree than percolation disposal, thereby compounding the perceived problem. Moreover, the City previously proposed to implement a reclamation option, which it believed was permitted by Water Code section 13523.2. That statute provides in relevant part that "[a] regional board may not deny issuance of water reclamation requirements to a project which violates only a salinity standard in the basin plan." Nevertheless, the Regional Board indicated that the City could not qualify for such option. Consequently, reclamation is no longer a viable compliance option for the City.

2. Dispose to Land Sites With Poorer Quality Groundwater

The City has also considered the possibility of disposing to land sites that overlie poorer quality groundwater. However, potential sites with what preliminarily appears to be poorer quality groundwater also have groundwater nearer the soil surface which would make percolation at these sites problematic. In addition, disposal on these sites would likely require dewatering of upgradient groundwater, and such

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groundwater would have to be discharged in some manner to allow for wastewater to percolate. The City, however, was prepared to further evaluate implementation of this option because discharge of groundwater is regulated differently, and therefore this option could potentially achieve compliance. However, the public was concerned that discharging to groundwater with salt concentrations higher than that of effluent could pose a potential future regulatory risk, and the high costs associated with purchasing the land and constructing the pipelines made that risk even more unpalatable. As a result, the voters overturned the rate increase needed to fund this alternative under a ballot initiative.

Disposal of effluent to land with poorer quality groundwater could have potentially adverse environmental impacts. Construction of any necessary infrastructure could have air quality, traffic, wildlife, noise or soil displacement impacts. In addition, the operation of such a system could have an adverse impact on surface water supplies.

3. Dispose to Surface Water

Another alternate disposal method is for the City to dispose of its wastewater to surface water. However, in an effort to protect agricultural irrigation beneficial uses, the Regional Board's policy only permits a discharger to discharge to surface waters that contain salt concentrations less than 700 $\mu\text{S}/\text{cm}$ and requires that salt concentrations remain below 700 $\mu\text{S}/\text{cm}$ after discharge. There are no local surface waters available whereby the City could discharge in compliance with this policy. As a result, the City could only implement a surface water discharge option if a pipeline were constructed for discharges to the Sacramento River (a distance of over 15 miles).

B. Credit Trading

The City could fallow land historically used for agriculture to reduce the salt load to groundwater. Sufficient land can be fallowed to reduce the salt load to any degree possible. However, Regional Board staff has previously stated that credit trading for salts is not an acceptable compliance strategy.

C. Dilution

Dilution of effluent with storm water and surface water is another compliance measure the City has considered. The City's wastewater facilities have been designed to prevent overtopping of levees during a 1-in-100 year rain season. During the 1-in-100 year rain season, salt concentrations are expected to be significantly lower because substantial rain water falls directly into the treatment/disposal ponds. Additionally, there is likely to be a larger degree of infiltration of low salt rain water into the collection system. Moreover, during rain seasons that are less than 1-in-100 events, the City could augment the wastewater with surface water to dilute salts prior to percolation to groundwater. However, to date, Regional Board staff has stated that dilution of effluent with surface water is not the highest and best use of surface water supplies, is contrary to State water conservation goals, and is generally not an acceptable compliance method.

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Dilution of effluent could also have potentially adverse environmental impacts. Construction of any necessary infrastructure could have air quality, traffic, noise or soil displacement impacts. In addition, the operation of such a system could have an adverse impact on surface water supplies.

The City intends to continue evaluating the potential of this compliance strategy under a revised Cease and Desist Order because given the improvement in groundwater resources from SID irrigation, the City believes dilution and banking of water in the groundwater resource at a lower salt content than has historically been practiced is in the best interest of the State. However, any surface water dilution scenario would require a means of assuring regulatory compliance. It is the opinion of the City and its consultants that the existing groundwater monitoring network is insufficient at this time to determine degradation or compliance with any disposal strategy. The City has requested, and continues to request, the inclusion of modifications to the regulatory compliance network in the regulatory schedule until wastewater impacts to groundwater can clearly and accurately be discerned.

D. Source Control

Source control is another possible means by which the City could attempt to achieve compliance with the Tentative Cease and Desist Order. Source control consists of preventing contaminants from entering the waste stream. For sodium, chloride, electrical conductivity, and total dissolved solids, possible source control methods include regulating commercial saline discharges into the municipal sewerage system, adopting an ordinance banning the future installation of residential water softeners, implementing a voluntary buy-back program for existing residential water softeners, and municipal well-head treatment of potable water.

While regulation of commercial dischargers and residential water softeners would not have a significant economic impact to the City, an effective voluntary buy-back program would require the City to expend significant funds for rebates and public outreach. The vast majority of voluntary buy-back programs have proven to have limited effectiveness. Nevertheless, the City is committed to evaluating the implementation of such a program.

For boron, the only possible source control options are municipal well-head treatment or conversion to a new water supply (which is being investigated, but does not appear feasible at this time). It appears that boron is entering the system via the municipal water supply, and concentrations in the water supply comply with regulations associated with the MUN beneficial use. Boron concentrations are elevated throughout the region, and are depressed in shallow groundwater where the Solano Irrigation District provides surface water as an alternative to groundwater for irrigation use. Boron removal is problematic because even well-head treatment will result in a concentrated waste that requires specialized disposal. One disposal option is to truck the waste to an appropriate landfill. However, trucking is fossil fuel dependent and will result in air quality impacts and increased greenhouse gas emissions. Another disposal option is to construct an on-site landfill, which would involve additional potential environmental impacts.

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1. Statutory Constraints on Regulation of Water Softeners

The City's ability to regulate residential water softeners is significantly limited by State law. Health and Safety Code section 116775 *et seq.* protects the right of residents to use water softeners and authorizes municipalities to ban residential water softeners only if (i) the municipality finds that banning residential water softeners is a necessary means of achieving compliance with Regional Board waste discharge requirements; (ii) the municipality finds that it has adopted and is enforcing regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources to the extent economically and technologically feasible; and (iii) the municipality's findings are substantiated by an independent salinity source study. Furthermore, any ordinance adopted by a municipality must be prospective in nature and may not require the removal of existing residential water softeners.

2. Source Control Will Not Be Effective to Achieve Interim or Final Effluent Limitations

Unless voluntary buy-back programs are significantly more effective than we are currently aware of, it is unlikely that such program will enable the City to achieve compliance with either the interim limits presented in Tentative Order, paragraph 4 or the second-tier limits presented in Tentative Order, paragraph 6. Moreover, even if the City is able to satisfy the requirements necessary for adopting an ordinance to ban the future installation of residential water softeners, such an ordinance would not enable the City to achieve compliance with the Regional Board's groundwater limitations because the City is prohibited from banning the use of existing water softeners. Consequently, a water softener ordinance would not reduce saline discharges from existing residential water softeners that are currently contributing to salinity concentrations in effluent. Rather, such an ordinance would merely prevent future increases in saline discharges from residential water softeners.

E. **Additional Treatment**

The City could convert to a less land intensive treatment process. Conversion to a less land intensive treatment process (e.g., activated sludge) might reduce internal evaporation, resulting in less concentrated salts in the effluent. However, conversion to a high rate treatment process will logically require substantially more energy than is now required for wastewater treatment and disposal and could result in greater greenhouse gas emissions than are currently produced, although not quantified at this time.

The only sure means of reducing salt would be through implementation of a salt reduction treatment process. Options include reverse osmosis, electrodialysis reversed, and deionization. These options all consist of changing the chemistry of the wastewater to remove salinity through a mechanized process. All are extremely energy intensive and would result in greater greenhouse gas emissions. In addition, these options would produce large quantities of highly concentrated brine waste requiring specialized disposal. The brine could be disposed of by trucking it to an appropriate disposal facility; however, trucking would also result in greater greenhouse gas emissions and other air quality impacts. Alternatively, the City could construct an on-site landfill where the brine could be disposed of. This would also require extensive and lengthy environmental review, permitting and approval.

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All of these options will require extensive analysis under the California Environmental Quality Act ("CEQA") to determine the level of significant impact and appropriate mitigation measure that may be required.

VI. Adoption of the Cease and Desist Order is Not Categorically Exempt from the California Environmental Quality Act, So Impacts Must Be Considered

The Regional Board's issuance of the Cease and Desist Order is not categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") because it is subject to the significant effect and cumulative impact exceptions. While the adoption of an administrative order by a regulatory agency is generally exempt from the requirements of CEQA as a Class 21 project¹, a regulatory agency may not rely on such exemption if there is a reasonable possibility that issuance of the order will have a "significant effect on the environment due to unusual circumstances"² or if "the cumulative impact of successive projects of the same type in the same place, over time is significant."³

A. Significant Effect Exception Applies

The Class 21 exemption is inapplicable to the Cease and Desist Order because it falls within the "significant effect exception". In order for the exception to apply there need only be a *reasonable possibility* that the order will have a significant effect on the environment due to an unusual circumstance. A significant effect is defined as a "substantial, or potentially substantial, adverse change in the environment."⁴ Accordingly, a project has a significant effect if it "has the potential to degrade the quality of the environment."⁵ Moreover, the circumstances of a project are deemed unusual if (i) they differ from the general circumstances of projects covered by the applicable categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects.⁶

1. Issuance of Cease and Desist Order Will Have Significant Effects on the Environment

The Regional Board's issuance of the Cease and Desist Order has the potential to degrade the quality of the environment because the only likely means by which the City can achieve compliance with the groundwater limitations set forth in the order is by constructing energy-intensive improvements to the WWTF such as reverse osmosis. Construction and operation of these treatment plant improvements would likely cause several adverse environmental impacts, including but not limited to, short-term and long-term impacts to air quality in the form of dust and green house gas emissions, increased noise, impacts to surrounding roadways resulting from construction of project infrastructure, increased energy consumption, impacts from storage and use of hazardous materials, and impacts from the production of large quantities of brine.

¹ Cal. Code of Regs. Tit. 14, § 15321(a).

² Cal. Code of Regs. Tit. 14, § 15300.2.

³ *Id.*

⁴ Pub. Resources Code, § 21068.

⁵ Pub. Resources Code, § 21083; *Azuza Land Reclamation Company v. Main San Gabriel Basin Watermaster*, 52 Cal.App.4th 1165, 1198 (1997).

⁶ *Azuza Land Reclamation Company v. Main San Gabriel Basin Watermaster*, 52 Cal.App.4th 1165, 1207 (1997).

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In fact, the State Board in *In the Matter of the Petition of the City of Manteca*⁷ indicated that the construction of a reverse osmosis plant would have significant effects on the environment which must be considered by the Regional Board in issuing an order. In *Manteca*, this Regional Board issued to the City of Manteca renewed waste discharge requirements and a cease and desist order that established a time schedule for compliance with specified provisions in the renewed permit. The City of Manteca argued that the only way it could comply with the effluent limitations in its permit would be through construction and operation of a reverse osmosis water treatment facility. The State Board found that the record supported the City of Manteca's argument and took official notice "of the fact that operation of a large-scale reverse osmosis treatment plant would result in production of highly saline brine for which an acceptable method of disposal would have to be developed." Furthermore, the State Board concluded that "any decision that would require the use of reverse osmosis to treat the City's municipal wastewater effluent on a large scale should involve thorough consideration of the expected environmental effects."

2. The Circumstances of the Cease and Desist Order are Unusual

The circumstances of the Cease and Desist Order are unusual relative to projects typically exempt under a Class 21 exemption and would create an environmental risk that does not exist for Class 21 projects. The Class 21 exemption applies to "actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use" and includes the adoption of an administrative decision or order enforcing or revoking a permit.⁸ The typical projects for which this exemption applies are enforcement actions by a regulatory agency whereby the agency files a complaint, assesses a penalty or orders a permittee to undertake certain measures that have little to no impact on the environment. Accordingly, the circumstances of the Cease and Desist Order differ from the circumstances of typical Class 21 projects because there is reasonable possibility it would require the City to construct a reverse osmosis treatment plant (or other energy-intensive treatment plan improvements) to achieve compliance with effluent limitations. The Class 21 exemption clearly does not contemplate enforcement actions that would require a permittee to construct a new facility because the Class 21 exemption explicitly excludes construction activities undertaken by a public agency⁹ and therefore by implication excludes construction activities undertaken by a permittee to comply with an enforcement order. Moreover, the construction and operation activities that would be required by the Cease and Desist order clearly create an environmental risk that does not exist for typical Class 21 projects because as discussed above, such activities would cause dust and green house gas emissions and would produce a highly saline brine for which an acceptable method of disposal would have to be developed.

B. The Cumulative Impact Exception Applies

The Cease and Desist Order is not categorically exempt from CEQA because the cumulative impact of successive Regional Board orders that apply similar policies to those applied to Dixon in the Tentative

⁷ Order WQ 2005-0005, 2005 WL 5166378 at 8.

⁸ Cal. Code of Regs. Tit. 14, § 15321(a).

⁹ *Id.*

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Cease and Desist Order over time is significant. A cumulative impact is the "change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probably future projects."¹⁰ Moreover, "cumulative impacts may result from individually minor, but collectively significant projects taking place over a period of time."¹¹

There are over 35 wastewater treatment plants in the Central Valley Region, many of which discharge effluent with characteristics similar to the City's effluent (see Exhibit B). If the Regional Board issues enforcement orders or waste discharge requirements to some or all of these discharges in the future, imposing salinity requirements similar to those set forth in the Tentative Cease and Desist Order, the cumulative impacts of such enforcement actions would be significant over time because as discussed above, the measures necessary to achieve compliance with such requirements, such as construction and operation of a reverse osmosis plant (or other energy-intensive improvements), would significantly increase energy consumption and increase green house gas emissions. In addition, the operation of several reverse osmosis treatment plants in the region would generate large quantities of saline brine that would have to either be trucked to a landfill for disposal or disposed of at an on-site landfill.

VII. Economic Considerations and Other Factors Under Water Code section 13241 Were Not Considered in Setting the Interim and Second-Tier Effluent Limitations

The interim and second-tier effluent limitations in the Tentative Cease and Desist Order were not derived in compliance with the requirements of the Water Code, and they are therefore invalid. The effluent limitations do not implement a valid water quality objective, and the Tentative Order does not contain findings demonstrating compliance with Water Code sections 13263 and 13241.

A. The Basin Plan Does Not Contain an Applicable Water Quality Objective

The effluent limitations in the Tentative Cease and Desist Order are purportedly based on provisions of prior orders stating that the City's discharge is not to cause constituents in the underlying groundwater to exceed background water quality or receiving water limits, whichever is higher. These provisions appear to be an implementation of the Basin Plan anti-degradation provisions. (See Basin Plan p. IV-17.00 [explaining that anti-degradation policy requires discharges to achieve the higher of background or receiving water limits].) The relevant portions of the Basin Plan do not even appear in the Water Quality Objective chapter. Rather, they are found in the Implementation Chapter.

Furthermore, Basin Plan provisions purportedly implemented by the effluent limitations clearly do not meet the definition of a water quality objective. As defined in Water Code section 13050, subdivision (h):

"Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the *reasonable protection of beneficial uses* of water or the *prevention of nuisance* within a specific area.

¹⁰ Cal. Code of Regs. Tit. 14, § 15355.

¹¹ *Id.*

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(Emphasis Added.) Effluent limitations in the Tentative Order, which focused on maintaining background levels of constituents, are not tied to consideration of beneficial uses or nuisance. The effluent limitations therefore do not implement any existing *water quality objective* in the basin plan.

B. For Discharges to Non-Federal Waters, the Regional Board Must Consider Water Code section 13241 Factors When Setting Effluent Limitations

The Regional Board is obligated to consider all of the factors listed in Water Code sections 13263 and 13241 when setting effluent limitations for discharges to non-federal waters. For all discharges, it has always been State Board policy to consider section 13241 factors when setting water quality objectives on a case-by-case basis.¹² In this case, where there is no applicable water quality objective in the Basin Plan, the Regional Board is required to all of the factors in sections 13263 and 13241 before imposing the effluent limitations. There are no findings demonstrating the process was followed.

Furthermore, under *Burbank v. State Water Resources Control Board*¹³, it is clear that for permits issued solely under state law, the Regional Board must consider the factors listed in Water Code section 13241 even when implementing water quality objectives in the Basin Plan. "The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit."¹⁴ Indeed, in state permits, the high court opined that effluent limitations may be relaxed in consideration of compliance costs.¹⁵

In the Tentative Order, there is no indication that any of these considerations were made in setting the effluent limitations.

C. The Effluent Limitations Are Substantively Different from the Waste Discharge Requirements

The Tentative Order incorrectly suggests that the new effluent limitations do not substantively change the effluent limitations in the 1994 Waste Discharge Requirements. Although this would not affect the Regional Board's obligation to comply with Water Code sections 13263 and 13241, it is incorrect in any event. In the 1994 WDRs, the Regional Board expressly found that "[t]he discharge complies with the Basin Plan."¹⁶ The Tentative Order clearly takes a substantively different position.

In short, the Tentative Cease and Desist Order does not contain any findings demonstrating compliance with

¹² *Matter of City and County of San Francisco, San Francisco Baykeeper*, 1995 WL 576920, Order No. WQ 95-4, p. *5.

¹³ (2005) 35 Cal.4th 613.

¹⁴ *Id.* at p. 625.

¹⁵ *Id.* at p. 626, fn. 7.

¹⁶ Order No. 94-187, p. 2.

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Water Code provisions governing the adoption of effluent limitations, and the record is devoid of evidence supporting the effluent limitations.

VIII. Resolution No. 68-16 Was Incorrectly Applied to Dixon's Discharge

The Tentative Order's apparent reliance on the State Anti-Degradation Policy as a justification for the new effluent limitations is misplaced and unjustified. First of all, the Tentative Order takes inconsistent and confusing positions as to whether the underlying groundwater qualifies as "high quality waters" subject to the Policy. Second, there are no findings and there is no evidence demonstrating that the Regional Board conducted an analysis of the factors listed in the Policy to determine the appropriate level of effluent control. The evidence in the record shows that the maximum benefit to the people of the State will actually be undermined by forcing the City to undertake wastewater treatment improvements with potentially significant adverse environmental impacts to prevent non-existent impacts to beneficial uses from Dixon's discharge.

Furthermore, the current draft recycled water policy indicates that expensive wastewater treatment facility improvements are not necessary to achieve best practicable treatment technology. The Tentative Order, however, incorrectly assumes the contrary.

IX. The Second-Tier Effluent Limitations Are Based on a Flawed Interpretation of Groundwater Data

The City disagrees with the methods the Regional Board staff has applied to determine numeric groundwater limitations and to assess compliance at the WWTF site. The specific technical issues the City has with the Regional Board's methods are addressed in detail in the attached letter to Regional Board staff (see Exhibit A), signed by the Hydrogeologist of Record. The attached letter is intended to supplement the Groundwater Monitoring Report and Differentiation of Effluent Impacts to Groundwater Using Multiple Tracers documents already submitted to Regional Board staff and to respond to written review comments from Regional Board staff. The letter will also be transmitted separately so it can be filed with those documents for the record.

The City's position is summarized as follows:

- Background groundwater conditions cannot be adequately characterized if only the water quality in the background assessment wells prescribed by the Cease and Desist Order is considered.
- If groundwater limitations will be used for compliance, then all sources of solutes that may affect the compliance well network must be accounted for in the background characterization and resultant limitations.
- Even if the City were to remove all salt from the WWTF effluent, or to cease all effluent percolation, it could not achieve compliance because the relative strength of the identified outside sources of solutes exceed the numeric limitations in the CDO.
- When outside sources of solutes and other regional water quality information, such as temporal and spatial variability, are considered, measurable salinity impacts from effluent to groundwater are

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not discernable from salinity impacts due to neighboring land use practices and natural hydrogeologic conditions. This conclusion is consistent with all prior assessments the City has submitted to the Regional Board since July 1998.

The City's consultants have advised the City, based on their experience evaluating groundwater impacts at many land disposal and reclamation facilities, that similar problems with the application of Title 27 compliance assessment techniques for discerning groundwater impacts (Title 27 was developed to detect leakage at landfills) are confounding groundwater characterization and compliance assessments at other California locations, including Lockford, Kirkwood Meadows, Woodland, Pilot Travel Center, and Mountain House. The Mountain House data has been used as a case study of the potential problems for State Board Training Academy Sessions.

X. Additional Specific Comments

In addition to the general modifications to the Tentative Cease and Desist Order proposed above, the City proposes the following specific revisions to the order:

Item 5

The reference to "*undisinfected wastewater*" should be stricken because the incidents referred to were controlled releases of secondary treated, disinfected, dechlorinated, and fully monitored effluent. In addition, it should be noted that the 1995 discharge occurred during a 30-year wet season which exceeded the 1-in-25 year wet season design capacity rating of the facility required by Regional Board policy at the time. The facility was subsequently expanded and its present rated capacity is for 1-in-100 year wet seasons, reflecting the Regional Board's more recent policy. There have been no further releases of effluent since the facility was expanded in 1996.

Item 6

The last sentence should be revised to reflect that there was *limited* groundwater monitoring data available at the time and that the City's Report to the Regional Board dated July 15, 1998 concluded that,

"From available data, it appears that the City's treatment and disposal facility is adding salinity (as measured by TDS and EC) and nitrate to shallow, first recoverable groundwater. These additions do not appear to be atypical or substantially different from additions made by alternative land uses in the Dixon area based on EC values, changes in EC values, and nitrate values monitored by DWR and the City in the greater Dixon area."

Item 8

The last sentence should be revised to read as follows:

However, the WWTF did not have sufficient treatment and disposal capacity to accommodate all projected

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residential, commercial, and industrial growth *expected* over the *subsequent* three years.

Item 9a

The City disagrees. Its evaluation of groundwater quality is stated in the comment to Item 6 above.

Item 9b

The record reflects that during the time frame in question effluent water quality continued to improve due to increased industrial pretreatment inspections. This was during a period of time when many growing municipal wastewater discharges were increasing in salinity concentration due to the effective statewide implementation of plumbing fixture water conservation standards in new construction.

Item 10

To better reflect the record, the first two sentences should be revised to read:

The Dixon WWTF effluent is more saline than typical surface water supply generated municipal wastewater, due to a low saline, but very hard, groundwater supply. Due to the high hardness many residences and businesses use ion-exchange water softeners. The discharge of self-regeneration brine, and even ion-exchanged sodium ions from the water softener resins to the community sewer appears to account for most of the salinity above the interim effluent limitations prescribed in the Tentative Order.

The table should be revised to state TDS Effluent Concentrations as: 480 mg/L min., 1300 mg/l max, 804 mg/L average, using the dates referenced.

Item 11

The 2005 CDO established *numerical* limitations for the first time, purportedly to ensure compliance with the narrative groundwater limitations set forth in the WDRs at the existing WWTF, and at any proposed expansion areas.

Item 11b

The new limitations referred to represent the first systematic attempt by Regional Board staff to assign site specific numerical limitations to the narrative groundwater limitations set forth in WDRs Order No. 94-187. The new limitations *substantively differ* from the water quality goals that were originally set by Regional Board staff and that governed all previous compliance project assessments by the City.

Item 12a

Regional Board staff initially deemed the Financing Plan inadequate because the plan did not appear to contain sufficiently detailed descriptions of the projects or a breakdown of the financing for those projects.

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However, when City staff later advised Regional Board staff that the requested information was already presented in the appendices, Regional Board staff had agreed in a January 2007 compliance assessment memo that the Financing Plan was adequate until the plan was overturned by the voters in November 2006.

Item 12f

The City did not complete the actions described because funding for such actions was withdrawn by the voters and expected growth had not materialized. Moreover, pond liners are not effective in protecting groundwater salinity at a land disposal facility. Furthermore, liners do not appear justified because there are no apparent indications of degradation from non-saline sources, such as nitrate, BOD, or coliform.

Item 12g

The City did not submit a Report of Waste Discharge at the November 30, 2007 meeting as requested by Regional Board staff because the City wanted to direct City and Regional Board staff efforts towards a revised C&DO that would provide a possible path to compliance.

Item 13

This item should be revised to read:

On 8 February 2006, staff notified the Discharger of *conditional approval* of the Wastewater Facilities and Financing Plan, while listing specific deficiencies, and informed the Discharger that it had incurred, and would continue to incur, civil liabilities for this report unless all future reports required by the CDO are complete and submitted on time.

In addition, the information Regional Board staff requested was included in the original appendices, and Regional Board staff did not respond to the City's written request for clarification as to whether the included information was still deemed inadequate. The City complied with the intent of the order, which is supported by Regional Board staff's January 2007 compliance assessment memorandum.

Item 14

The following statement should be included:

In a subsequent January 2007 compliance assessment transmitted to the Discharger, the Regional Board determined that although the Discharger had initially complied with all CDO requirements for the Financing Plan, the Plan was no longer operative due to the results of the November 2006 election.

Item 16

The City was only required to submit a revision or addendum to the Financing Plan because the plan was repealed by the electorate, not because the plan was inadequate when originally submitted to the Regional

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Board.

Item 17

Contrary to the Regional Board's assertions, the City has demonstrated significant progress with regard to the violations over the last ten years, including:

- Lessening salinity concentrations in the wastewater, even during periods of growth.
- The City evaluated fallowing of farmland to offset any salt concentrating effects of wastewater disposal. However, Regional Board staff determined that the approach [essentially trading credits], could not be applied to the WWTF.
- The City performed an evaluation of reclamation disposal options. However, Regional Board staff informed the City that it would not qualify for the salinity exception set forth in the Water Code, and therefore the City could not achieve compliance to the satisfaction of Regional Board staff.
- The City installed eight additional monitoring wells at locations specified by Regional Board staff in an effort to better assess groundwater impacts.
- The City conducted progressively more detailed groundwater impact assessments, all of which concluded that any measurable degradation by the WWTF was indistinguishable from that caused by surrounding land use. In 1998, ionic-ratios suggested non-wastewater sources were influencing at least some compliance wells. Water isotope data collected in 2006 continues to support this conclusion.
- The City's consultant worked for several months with Regional and State Board staff to develop and refine the statistical computational approach for the Title 27 protective numerical groundwater limitations assessment specified by the 2005 CDO.
- The City employed advanced water isotope analysis to determine with more certainty the sources of solutes detected in the compliance wells. This work confirmed earlier (1998) assessments that WWTF impacts are not discernable compared to the impacts from surrounding land uses.
- The advanced isotope analysis was also applied to reconnaissance shallow groundwater characterizations in the Dixon area and found that not only had the salinity of City effluent improved, but that in areas up-gradient of the WWTF, recent large scale use of SID surface water for farming is actually improving shallow groundwater quality over a large area compared to historic values and values outside of the SID delivery area, such as the area around the WWTF.
- The City proposed interim numeric effluent limitations as a possible compliance strategy that would be unaffected by surrounding land use influences.
- The City performed [and is completing] a salinity source study, which may, for the first time, allow

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the City to regulate and limit the installation of household salt discharging water conditioning appliances in new developments once numeric effluent limitations are adopted.

- The citizens of Dixon are more educated and involved than ever in understanding wastewater issues facing the City and State.

In summary, the City has in every case endeavored to address Regional Board staff concerns and direction for achieving regulatory compliance. Because many of the City's efforts are precedential in nature, possible compliance methods and their impact on other State water policy objectives have not been fully vetted. In fact, the Regional Board clarified its salinity policy in a 2007 memorandum to staff managers after the current CDO was issued. The City looks forward to continued collaboration with Regional Board staff in achieving regulatory compliance in a manner that is consistent with the Regional Board's 2007 memorandum and in the best interests of the people of California.

Item 19

At the referenced meeting, the City informed Regional Board staff that due to outside solutes influencing the monitoring well network it would be problematic for any facility to comply with the protective groundwater limitations imposed by the CDO, even if it could be financed. Therefore, a new CDO to replace the 2005 CDO is needed that provides sufficient time to a) allow dedicated salinity source controls to work, b) allow adjustments to the MRP and background assessments to better capture and discern wastewater and land use impacts on the groundwater, c) allow the City to secure SRF funding for capital projects, and d) incorporate the steps for salinity compliance presented in the Regional Board's 2007 salinity guidance memorandum. Regional Board staff agreed the City's request was reasonable and that it would bring a revised CDO to the Regional Board for consideration. The City was informed that it need not submit a new RWD, as required by the 2005 CDO, pending adoption of a revised CDO.

Item 20

The City has paid the \$220,000 penalty assessed in the Administrative Civil Liability Complaint; therefore, any alleged outstanding violations should no longer be at issue. However, the City contends that there were not 2,200 days of violation and that the number of days of violation was incorrectly calculated.

Item 23

The referenced limitations were calculated in accordance with the CDO and submitted to Regional Board staff, as required. The City proposed that if the CDO groundwater limitations were applied to an interim effluent limitation, the legal impediments to enacting new brine discharging softener controls could be addressed.

Item 24

The referenced limitations were calculated in accordance with the CDO and submitted as required to Regional Board staff. Also, the table should be annotated to reflect that Regional Board staff notified the

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City that it was reasonable to conclude that compliance wells MW-SWR, MW-6 and MW-10 are not indicative of wastewater discharges and therefore they would not be cited for numerical limitation compliance purposes. However, Regional Board staff would not agree that such wells may be indicative of local background conditions for assessment of the site specific numerical limitations themselves, pending additional sampling data.

Item 25

The City's effluent does not currently meet the proposed interim effluent limitations. As noted elsewhere in our comments, it is unlikely that compliance could be achieved with the CDO stipulated groundwater limitations, unless the documented outside influences are accounted for in the compliance wells.

Item 26

The City's planning efforts to date are necessary to achieve eventual compliance.

Tentative Revised MRP No. 94-187 (Revision 2)

Influent Monitoring

The City should be permitted to conduct a monthly composite sampling instead of the specified weekly grab samples.

Effluent Monitoring

The effluent compliance monitoring should be measured at the point of discharge to percolation ponds or disposal areas, and should be representative of the volume and nature of the discharge.

As the samples from pond treatment are self-compositing, monthly grab samples are sufficient to assess constituent loadings.

Please refer to the recently enacted City of Ripon MRP No. 94-263 Revision 2 for an example of the monitoring location and frequency the City is suggesting.

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Groundwater Monitoring

Ph should read pH.

All samples for metals analysis [Boron, Iron, Manganese, Sodium, and Standard Minerals] should first be filtered using a maximum effective pore diameter filter of 0.45 microns.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Newmark", written over a horizontal dotted line.

Gregory J. Newmark

cc: Patrick Pulupa, Esq.
Royce Cunningham

Enclosures

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